

APPEAL NO. 030830
FILED MAY 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 11, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter because the appellant (carrier) waived its right to contest the claimant's entitlement for the first quarter by failing to timely request a benefit review conference (BRC). The hearing officer additionally determined that the claimant is not entitled to SIBs for the second quarter. The carrier appealed the hearing officer's determination that it waived the right to contest the claimant's entitlement to SIBs for the first quarter. The file does not contain a response from the claimant. The hearing officer's determination that the claimant is not entitled to SIBs for the second quarter was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the carrier waived the right to contest the claimant's entitlement to first quarter SIBs. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(c) (Rule 130.108(c)) provides that a carrier waives its right to contest entitlement to first quarter SIBs if it does not request a BRC within 10 days of its receipt of the determination of entitlement of the Texas Workers' Compensation Commission (Commission). The hearing officer noted that the Commission sent the parties the notice of determination of entitlement to first quarter SIBs on November 25, 2002, and that document is date-stamped as having been received by the carrier on the same date. There is no Request for [BRC] (TWCC-45) in the record. Rather, the carrier submitted into evidence a Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) dated December 9, 2002, which "disputes" the claimant's entitlement to SIBs for the first quarter and concludes with the statement that "[t]he injured worker has the right to request a [BRC]." The TWCC-21 does not include language requesting a BRC. In Texas Workers' Compensation Commission Appeal No. 022848, decided December 11, 2002, we rejected the argument that a TWCC- 21 was sufficient to satisfy the requirements of Rule 130.108(c). In so doing, Appeal No. 022848 noted that the language of Rule 130.108 specifically requires that the carrier request a BRC and does not speak in terms of the carrier filing a dispute. In addition, Rule 141.1(b)(1) provides that a carrier is required to request a BRC by filing a TWCC-45, while Rule 141.1(c) permits an unrepresented claimant to request a BRC by contacting the Commission in any manner. In this instance, the record does not reflect that the carrier ever requested a BRC to contest the claimant's entitlement to first quarter SIBs and, as such, the hearing officer did not err in determining that the carrier waived its right to contest the claimant's entitlement to first quarter SIBs pursuant to Rule 130.108(c).

We are likewise not persuaded by the carrier's assertion that waiver should not be found in this instance because the dates of maximum medical improvement, the qualifying period, and the first quarter of SIBs were wrong in that notice. The fact remains that the carrier received notice of the Commission's determination of entitlement to SIBs and it was the carrier's receipt of that notice that triggered its obligation to comply with Rules 130.108(c) and 141.1. Although the notice included some erroneous information, we decline to hold that it was insufficient to prompt the requirement that the carrier timely request a BRC.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Edward Vilano
Appeals Judge